SON KAEWSA & ORS.

v.

THE SUPERINTENDENT OF CHANGI PRISON & ANOR.

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[ORIGINATING MOTION NOS. 32, 33 & 34 OF 1991]
6 JULY 1991

ADMINISTRATIVE LAW: *Habeas corpus ad subjiciendum - Personal liberty - Detention pending extradition proceedings - Remand orders - Ultra vires - Past illegalities - Effect in habeas corpus proceeding - Fresh remand orders - Requisition - Necessity of a warrant under s. 10(1)(b) - Discretionary power of the Director of Prisons to transfer only prisoner - Constitution, Article 9 - Extradition Act [UK], ss. 9, 10, 11 - Prisons Act [Sing], s. 32.*

EVIDENCE: *Hearsay evidence - Admissibility - Criminal Procedure Code [Sing], s. 133.*

The three applicants applied for writs of *habeas corpus* on the ground that they were unlawfully detained by the first respondent pending extradition proceedings under the Extradition Act (the Act). The three applicants were arrested by CNB officials following requests from the US authorities. They were remanded pending extradition to US for trial for drug offences.

Counsel for the applicants contended that his clients were being deprived of their personal liberty contrary to Article 9 of the Constitution in that their arrest and subsequent remands in Changi prison were not in accordance with the Act.

Held:

[1] Some of the remand orders made by the District Judge in March and April 1991 were *ultra vires* because under s. 10(1)(b) of the Act, he has no power to remand the applicants in custody for more than 7 days at any one time. However, past illegalities do not necessarily render subsequent remand orders unlawful.

[2] The principle is too well established that in *habeas corpus* proceedings, the Court is not concerned with past illegality unless such illegality subsists and vitiates the present detention. Each remand order was a fresh remand order and that as the remand orders subsisting at the return of the writs were valid, the applicants were in lawful custody for the purpose of these proceedings.

[3] A requisition in terms of s. 9(1) of the Act is not a condition precedent to the issue of a warrant of apprehension under s. 10(1)(b) but only to the issue of a warrant of apprehension issued at the request of the Minister under s. 9(1). The warrants in these proceedings were issued under s. 10(1)(b).

[4] The transfer of the applicants from a remand centre to another is within the permitted discretionary powers of the Director of Prisons, acting under s. 32 of the Prisons Act. This is a power to transfer a prisoner, as distinct from the Court's power of remand. The latter could not validly impinge on the former. The Court could not take away the power of the Director of Prisons by specifying the place of remand.

[5] There was no evidence to show that the transfer of the applicants to Changi Prison was done *mala fides*. It was in fact done on the request of CNB officials, based on security grounds. Without proof of *mala fides*, the Court could not interfere with the discretionary

power of the Director of Prisons. Even if the remand at Changi Prison is illegal, it does not make the remand illegal *per se*. The Court would simply send the applicants back to Queenstown Remand Prison or an authorised prison for remand.

[6] Hearsay evidence is admissible in an application under s. 10(2) of the Act because, at that stage, the Magistrate is not required to make any finding of fact but simply to consider whether the evidence, assuming it was admissible, is sufficient, in his opinion, to justify the issue of a warrant of apprehension. The Magistrate in hearing the application under s. 10(2) is not conducting an extradition hearing; he is merely initiating the process of bringing the fugitive to his presence for the purpose of conducting such a hearing.

[7] The words "according to the law in force in Singapore" in s. 10(1) do not import the hearsay provisions of the Evidence Act and did not effect any change in law in force when the Act came into force. Hearsay evidence is admissible in a complaint under s. 133 of the CPC. The procedure for making an application under s. 10(2) has not been prescribed and the application could only be made by way of complaint under s. 133 of the CPC. The documentary hearsay evidence provided before the Magistrate in these applications was more than sufficient to justify the issue of the warrants of apprehension against the applicants.

[8] The terms of each complaint itself included an express prayer for a warrant of apprehension to be issued against the relevant applicant under s. 10(1)(b). In signing the form, the Magistrate could not be signifying the making of an order other than the one prayed for. The unsigned copies of the warrants of apprehension exhibited in the said reports to the Minister did not necessarily imply that the original warrants under which the applicants were arrested had not been signed.

[9] The applicants' contention that they could not have committed any offence in the United States as they had not been to that country was not relevant at this stage of the proceedings as under s. 10(2), the Magistrate was not required to decide this issue, nor was it his duty. His duty was to decide, in accordance with the terms of s. 10(1)(b) whether the evidence justified the issue of warrants of apprehension if the act or omission constituting the extradition crime, had taken place in, or within the jurisdiction of Singapore.

[10] The applicants' argument that since the alleged offences had taken place in Singapore, Hong Kong and Bangkok, the extraditable crimes were not committed anywhere within the jurisdiction of the US Courts, had no merit because s. 2(2) of the Act states that it is not necessary for the crime to be committed at a place within the jurisdiction of the United States. It is sufficient for the purposes of the Act that the fugitive in question is alleged to have committed an extradition crime within the jurisdiction of the State seeking extradition.

[11] There is also no basis for the allegation that the applicants were in any way oppressed in order to break their will or physical well-being.

[Applications dismissed.]

Cases referred to:

Attorney-General of Our Lady the Queen for the Colony of Hong Kong v. Kwok-A-Sing [1873] 5 LR PC 179 ***(dist)***

Basanta Chandara Bose v. Emperor [1945] AIR FC 18 ***(cit)***

Chng Suan Tze v. Minister for Home Affairs [1989] 1 MLJ 69 ***(cit)***

Metropolitan Police Commissioner v. Hammond [1965] AC 810 ***(dist)***

Narajan Singh v. State of Punjab [1952] AIR SC 106 ***(cit)***

R v. Secretary of State for Homes Affiars, ex p McAvoy [1984] 1 WLR 1408 ***(cit)***

R v. Weill [1881] 9 QBD 710 ***(cit)***
Re Said Mohamed (No. 1) [1911] de Mello 587 ***(foll)***
United States of America v. Gaynor [1905] AC 128 ***(cons)***

Legislation referred to :
Criminal Procedure Code [Sing], s. 2(7), 133(1)
Extradition Act (Cap 103) [Sing], ss. 2(2), 8(1)(e), 9(1)(a), (b), (2), 10(1)(b), (2), 11(1), (2), (4), (6), 19
Extradition Act 1870 [UK], s. 8
Misuse of Drugs Act (Cap 185) [Sing], s. 13
Prisons Act [Sing], s. 32
Title 21 US Code [US], s. 842(a)(1)
Title 18 US Code [US], s. 2

Other sources referred to:
Mallal's Criminal Procedure Code, 4 Edn., p. 176
RJ Sharpe on The Law of Habeas Corpus, 2 Edn., p. 179

For the Applicants - Tan Hee Liang
For the Attorney-General - Wong Keen Onn

JUDGMENT

Chan Sek Keong J:

These were applications for writs of *habeas corpus* made by the respective applicants on the ground that they were being unlawfully detained by the 1st respondent at Changi Prison pending extradition proceedings against them under the Extradition Act Cap. 103 (the Act). At the conclusion of the hearing, I dismissed all the applications and said I would give my reasons later.

OM No. 32/91

On 2 March 1991 and on the following 2 days, after the Central Narcotics Bureau (CNB) received intelligence information, SLL and 2 others who were all CNB officers kept surveillance on the applicant (SK), a Thai national wanted by the United States government for drug offence, and who was then staying in a hotel in Singapore. On 4 March 1991, the US Embassy in Singapore, under cover of a third party note dated 4 March 1991 (TNP 083/91) sent to the Ministry of Foreign Affairs (MFA), a certified true copy of each of (a) a warrant for arrest 91-0294 M issued by a US District Court on 1 March 1991 and (b) a Complaint 91-0294 M filed in the said US District Court relating to SK. On the same day, MM, head of enforcement division of CNB, also received from HF, a US embassy attache, copies of the said documents. He handed them to RM, another CNB officer, who immediately filed a complaint under s. 133(1) of the Criminal Procedure Code (the CPC) and sought a warrant of apprehension under s. 10(1)(b) of the Act for the arrest of SK.

The Magistrate, having examined the complainant on oath in accordance with s. 133(1) of the CPC, issued a Warrant of Apprehension No. 4/91. At about 4.20 p.m., RM contacted SLL and informed him of the issue of the warrant of apprehension, and 15 minutes, later the CNB officers arrested SK at the hotel. He was then brought back to CNB headquarters where RM showed him the warrant of apprehension and also informed him that he had been arrested under the said warrant.

On 5 March 1991, SK was brought before a District Judge who, exercising the power of the Magistrate under the Act, remanded him for a week at Queenstown Remand Prison. On 12 March 1991, SK was again remanded for 14 days at Queenstown Remand Prison. On the

same day, the Director of Prisons, in exercise of his powers under s. 32 of the Prisons Act and after considering the request in writing of MM, made an order to transfer SK to Changi Prison for the purpose of remand. The transfer was made on 13 March 1991. On 26 March 1981, the District Judge again remanded SK until 19 April 1991. SK was again remanded from 19 April 1991 to 26 April 1991 and from 26 April 1991 until 24 May 1991. However, on 3 May 1991 SK was brought up before the district Judge who then varied the remand order by making a fresh remand order for 7 days. Thereafter SK was been remanded on periods of 7 days each and was detained at Changi prison for that purpose.

On 24 April 1991, the Minister for Law received from the US Embassy the certified and authenticated depositions filed with the US District Court in support of the request for the extradition of SK, SS and PB. On 30 April 1991, the Minister issued notices under s. 9(1)(b) of the Act to the district Judge in respect of the applicants. The effect of these notices was that the district Judge must then proceed, under s. 11(6) of the Act, to convene a hearing to determine whether the applicants should be committed to prison to await the warrants of the Minister for their surrender to the United States government.

OM Nos 33/91 and 34/91

On or about 20 February 1991, the US Embassy in Singapore, under cover of third party note (TNP No 057/91), sent to the MFA the following documents relating to the applicant in OM No 33/91 (SS) and the applicant in OM No 34/91 (PB): (a) a warrant of arrest issued by a US District Court on 30 January 1991 and (b) a certified true copy of an indictment containing 11 counts for various drug offences committed in the United States of America; and (c) a summary of the evidence against the said applicants.

Following similar formalities and procedures outlined in respect of OM No 32/91 Warrants of Apprehension No 2/91 and 3/91 were issued by the district Judge against SS and PB who were arrested at Changi international airport on 1 March 1991 and informed of the reason for their arrest. They were produced before the same district Judge on 2 March 1991 and remanded at "A" division until 8 March 1991, then subsequently from 8 March 1981 to 22 March 1991 partly at "A" division, and partly at Queenstown Remand Prison. On 13 March 1991, they were transferred to Changi prison on the direction of the Director of Prison made under s. 32 of the Prisons Act. Thereafter, they were remanded from 22 March 1991 to 19 April 1991, 19 April 1991 to 26 April 1991, and then from 26 April 1991 to 24 May 1991. Similarly, on 3 May 1991, they were brought before the District Judge who varied the current remand order by making a fresh remand order for 7 days. Like SK, they were subsequently remanded for periods of 7 days at a time.

Case for the Applicants

Counsel for the applicants contended that his clients had been and were being deprived of their personal liberty contrary to Article 9 of the Constitution in that their arrest and subsequent remands in Changi prison were not in accordance with law, *viz*., the Act. A number of arguments was advance in support of this submission. Before I consider these arguments, it is convenient to set out below, for present purposes, the provisions of the Act relevant to the present proceedings.

> 9(1) Subject to subsection (2), where a requisition for the surrender of a fugitive who is, or is suspected of being, in Singapore is made to the Minister by a foreign state, the Minister may, in his discretion:

(a) if a warrant for the apprehension of the fugitive has not been issued under s. 10, by notice in writing in accordance with Form 1 in the second schedule and directed to a Magistrate, inform the Magistrate that the requisition has been made and authorise him to issue a warrant for the apprehension of the fugitive; or

(b) if a warrant for the apprehension of the fugitives has been issued under s. 10 and a person has been apprehended under the warrant, by notice in writing in accordance with Form 2 in the second schedule and directed to Magistrate before whom the person may be brought; inform the Magistrate that the requisition has been made.

(2) If the Minister is of the opinion that the fugitive is not liable to be surrendered to the foreign state, he shall not give a notice under subsection (1) in respect of the fugitive.

10-(1) Where:

(a) a Magistrate is authorised by the Minister by a notice under s. 9(1)(a) to issue a warrant for the apprehension of a fugitive; or

(b) an application is made as prescribed to a Magistrate for the issue of a warrant for the apprehension of a fugitive who is, or is suspected of being, in Singapore,

and there is produced to the Magistrate such evidence as would in his opinion, according to the law in force in Singapore, justify:

(i) the apprehension of the fugitive by a member of the Singapore Police Force without the issue of a warrant; or

(ii) the issue of a warrant for the apprehension of the fugitive,

if the act or omission constituting the extradition crime had taken place in, or within the jurisdiction of Singapore, the Magistrate shall issue a warrant for the apprehension of the fugitive in accordance with Form 3 or 4, as the case may be, in the Second Schedule.

(2) Where a Magistrate issues a warrant under this section without having been authorised by the Minister by a notice under s. 9(1)(a) to issue the warrant, the Magistrate shall forthwith send to the Minister a report stating that he has issued the warrant and the evidence produced to him on the application for the warrant.

11.(1) A person who is apprehended under a warrant issued in pursuance of s. 10 shall, unless he is sooner released, be brought as soon as practicable before a Magistrate.

(2) The Magistrate may remand a person brought before him under this section, either in custody or on bail, for a period or periods not exceeding 7 days at any one time and, where a Magistrate remands a person for such a period, the person may, at the expiration of the period, be brought before that Magistrate or before any other Magistrate.

(3) In the application of subsection (4) to (8) in relation to a person who has been apprehended under a warrant issued in pursuance of s. 10, "Magistrate" means the Magistrate before whom the person is brought after he was apprehended or at the expiration of a period for which he has been remanded under this section, as the case may be.

(4) If the person was apprehended under a warrant issued otherwise than in pursuance of an authority by the Minister in a notice under s. 9(1)(a), the Magistrate shall remand the person in accordance with subsection (2) until the Magistrate receives a notice under s. 9(1)(b) from the Minister informing the Magistrate that a requisition for the surrender of the person has been made to the Minister by a foreign state.

(5) Where the Magistrate does not receive such a notice within such time as is reasonable having regard to all the circumstances, the Magistrate shall:

(a) if the person apprehended is held in custody - order that he be released; or

(b) if he has been admitted to bail - make an order discharging the recognizances upon which he was admitted to bail.

1. *Were Applicants in Lawful Remand Custody?*

As the applicants had been arrested under warrants of apprehension issued under s. 10(1)(b), the District Judge had no power to remand them in custody for more than 7 days at any one time as mandated by s. 11(4) read with s. 11(2). Accordingly, some of the remand orders made by him were *ultra vires*. Counsel for the applicants accordingly argued that these unlawful remand orders rendered unlawful all subsequent remand orders even though they complied with s. 11(2). He relied on the authority of *Metropolitan Police Commissioner v. Hammond* [1965] AC 810. In that case, the House of Lords held, in a case concerning the mutual backing of warrants, that the arrest of the respondent could not be ordered in the absence of an endorsement by the inspector general as required by the relevant United Kingdom Act, even though that office had been abolished by the Irish Parliament.

State Counsel, on the other hand, contended that, in *habeas corpus* proceedings, past illegality was irrelevant and the only issue before the Court was whether at the date of the return of the writ, the applicants were in lawful custody. The Court was not concerned with any prior illegal act unless it vitiated the present cause of detention. He referred to a passage from RJ Sharpe on The Law of *Habeas Corpus*, 2nd Edn., at p. 179 and the decision of the Supreme Court of India in *Narajan Singh v. State of Punjab* [1952] AIR SC 106, which followed the decision of the Federal Court of the India in *Basanta Chandra Bose v. Emperor* [1945] AIR FC 18 on this point. Both the said decisions concerned preventive detention cases. State Counsel accordingly contended that the applicants were in lawful detention at the date of the return of the writs as on that date they were in custody under valid remand orders.

I accepted the submission of State Counsel. The principle was too well established. In *habeas corpus* proceedings, the Court is not concerned with past illegality unless such illegality subsists and vitiates the present detention. In *United States of America v. Gaynor* [1903] AC 128, where the US government sought the extradition of the respondents from Canada whose extradition law was the same as that of the United Kingdom, the Privy Council said, at p. 134:

> Now the only question which the learned Judge had to determine was whether the accused were at the time of the writ in question in lawful custody. If they were, he had no jurisdiction to release them, but was bound to remand them in custody.

Hammond's case had no application nor was the decision of the House of Lords inconsistent with established principle as the invalidity of the warrant of apprehension in that case was incurable: it was not signed and could not be signed by the officer under the relevant law, the post having been abolished by statute. The arrest and subsequent custody of Hammond were illegal at all times.

I also agreed with State Counsel that each remand order was a fresh remand order, and that as the remand orders subsisting at the return of the writs were valid remand orders, the applicants were in lawful custody for the purpose of these proceedings.

2. *Was there a Valid Requisition for the Surrender of the Applicants?*

It was contended by Counsel that there was a failure to comply with s. 9(1) of the Act in that the third party notes, TNP 083/91 and TNP 057/91, expressly requested the **provisional arrest** of the applicant and not, as required by s. 9(1), the **surrender** of the applicants. In any view, this argument was based on a misunderstanding of the scheme of Act. A warrant of apprehension may be issued by the Magistrate under s. 10(1) upon the authorisation of the Minister acting under s. 9(2) or upon the complaint of any person under s. 10(2). The latter subsection provides a summary procedure for the issue of a warrant of apprehension

to avoid any delay that may be involved in a foreign government proceeding by way of a requisition to the Minister under s. 9(1). Any delay may result in the escape of the fugitive. Accordingly, a requisition in terms of s. 9(1) is not a condition precedent to the issue of a warrant of apprehension under s. 10(1)(b), but only to the issue of a warrant of apprehension issued at the request of the Minister under s. 9(1). The warrants of apprehension relating the applicants were issued under s. 10(1)(b) of the Act.

3. *Were the Applicants in Lawful Remand in Changi Prison?*

Counsel for the applicants also argued that the applicants were unlawfully remanded at Changi prison as the Director of Prisons transferred them to Changi prison contrary to orders of the district Judge that they be remanded at Queenstown Remand Prison. In my view, there was no substance in this argument. It was true that the district Judge had made an order for the remand of SS and PB at Queenstown Remand Prison (but, from the Court file, the case of SK was entirely clear). However, under s. 32 of the Prisons Act the Director of Prisons was vested with a discretionary power to transfer any prisoner (which expression, as defined in s. 2 thereof, included each of the applicants) to any prison within Singapore. It was a power to transfer as distinct from the Court's power of remand. The Court's power of remand could not validly impinge on the power to transfer. The Court could not takes away the power of the Director of Prisons by specifying the place of remand.

Counsel also argued that the transfers were made by the Director of Prison in bad faith with a view to breaking the will of the applicants. I found no evidence whatever to support the allegation of bad faith. The Director of Prisons swore an affidavit that he transferred the applicants to Changi prison upon an application by the CNB officers based on security grounds. There was no evidence to suggest that he transferred them for any other reason. Short of proof of *mala fides*, the Court could not interfere with the exercise by the Director of Prisons of his discretionary power in this respect: see *R v. Secretary of State for Home Affairs, ex P McAvoy* [1984] 1 WLR 1408. But even if, which was not the case, the applicants' remand in Changi prison were illegal, they were only entitled not to be held in custody at Changi prison. The order of the Director of Prisons, if made in breach of the law, would be subject to judicial review for the purpose of quashing it. Its illegality did not render the remand of the applicants, illegal, *per se*. This Court would simply send them back to Queenstown Remand Prison or an authorised prison for remand.

4. *Were the Applicants Lawfully Apprehended?*

It was also submitted by Counsel for the applicants that the Magistrate had no legal basis for issuing the warrants of apprehension. This submission went to the jurisdiction of the Magistrate and, if right, would render their detentions illegal, based as they were on the summary warrants. A number of arguments was made in support of this submission.

The first was that there was no evidence or sufficient evidence before the Magistrate to show that the applicants had committed any offence for which their extraditions were being sought. This argument was based on two grounds: (a) that the evidence adduced before the Magistrate was hearsay evidence and was therefore not admissible under the Evidence Act, and (b) that, in the cases of SS and PB, the Magistrate had looked at evidence which was not referred to in the complaint made by RM.

With respect to (a), Counsel contended that in s. 10(1), the words "there is produced to the Magistrate such evidence as would, in his opinion, **according to the law in force in Singapore,** justify ... (ii) the issue of a warrant for the apprehension of the fugitive" were referable to evidence as defined in and admissible by virtue of the Evidence Act. He contrasted these

words with s. 8 of the UK Extradition Act of 1870 which did not contain them. He submitted that the additional words rendered inapplicable the authorities decided under s. 8 of the 1870 Act which State Counsel had relied on. The 1870 Act was part of the laws of Singapore until its repeal by the Act. Section 8 provided as follows:

> *8 Issue of warrant by police Magistrate justice, etc.*
>
> A warrant for the apprehension of a fugitive criminal, whether accused or convicted of crime, who is in or suspected of being in the United Kingdom, may be issued.
>
> 1. (not applicable); and
>
> 2. By a police Magistrate or any justice of the peace in any part of the United Kingdom, on such information or complaint and such evidence or after such proceedings as would in the opinion of the person issuing the warrant justify the issue of a warrant if the crime had been committed or the criminal convicted in that part of the United Kingdom in which he exercises jurisdiction.

The decisions cited by state Counsel were *R v. Weill* [1881] 9 QBD 710 which was followed by a Singapore Court in *Re Said Mohamed* (No 1) [1911] de Mello 587. In *R v. Weill*, the Court of Appeal decided that hearsay evidence was admissible as the section merely required the Magistrate to be satisfied, **in his opinion**, and that it was a judicial discretion. Jessel MR said:

> There must be some evidence, but very little will do, for it is merely for the purpose of detaining the man.

In *Re Said Mohamed (No. 1)*, Fisher J held that it was no objection to a provisional warrant that it was issued on information contained in a telegram from the Governor of the Celebes to the Dutch Consul in Singapore stating that the prisoner had committed embezzlement of a large sum of money and jewellery, and asking for the prisoner's provisional detention, and stating that the warrant for his arrest would follow.

I rejected Counsel's submission that the additional words in s. 10(1) of the Act had imported the hearsay provisions of the Evidence Act. When *Re Said Mohamed (No 1)* was decided, the Evidence Act was also in force and so was the CPC. In relation to the Evidence Act, there was no reason why, if 1870 Act when it was part of the laws of Singapore. The absence of the words "according to the law in force" would not have made the hearsay provisions in the Evidence Act any the less applicable as they were in force as law. The Evidence Act was and is a general statute governing the admissibility of evidence in judicial proceedings in or before any Court to prove the existence of any fact in issue. I venture to suggest that hearsay evidence is admissible in an application under s. 10(2) of the Act because, at that stage, the Magistrate is not required to make any finding of fact but simply to consider whether the evidence, assuming it were admissible, is sufficient, in his opinion, to justify the issue of a warrant of apprehension. The Magistrate in hearing an application under s. 10(2) of the Act is not conducting an extradition hearing but merely initiating the process of bringing the fugitive to his presence for the purpose of conducting such a hearing.

This conclusion was consistent with the position under s. 133 of the CPC. It is settled law that hearsay evidence is admissible in a complaint made under s. 133 of the CPC: see *Mallal's Criminal Procedure Code*, 4th Edn., at p. 176. The procedure for making an application under s. 10(2) has not been prescribed. Accordingly, RM's applications could only be made by way of complaints under s. 133. I had no doubt that the Magistrate had jurisdiction in relation to all matters under the Extradition Act: see s. 8(1)(c) and s. 19 of the Act, and s. 2(7) of the CPC.

In my view, therefore, the addition of the words "according to the law in force in Singapore" did not effect any change in the law in force when the Act came into force. In the instant cases, the documentary hearsay evidence produced before the Magistrate was more than sufficient to justify the issue of the warrants of apprehension against the applicants.

With respect to argument (b), it could not be disputed that the summary of the charges against SS and PB was produced before the Magistrate together with the indictment as the Magistrate had included a copy thereof in his report to the Minister under s. 10(2) of the Act. I was satisfied that the summary formed part of the indictment and therefore need not be certified separately as a true copy. In any event, even without the summary, there was sufficient evidence contained in the indictment itself to justify the issue of the warrants of apprehension against SS and PB. There was no merit in this argument.

5. *Were the Warrants of Apprehension Issued on Signed?*

Counsel contended that the applicants were not in lawful custody as, firstly, there was a doubt as to whether the Magistrate had issued the warrants of apprehension or some other orders, and secondly, if he did issue the warrants, they were unsigned when the applicants were arrested. What had happened here was that the complaints of RM were typed on standard printed forms each of which consisted of 2 pages. Page 1 was a blank sheet (for the complaint to be entered) and p. 2 contained a column with the words: "Issue Notice/ Warrant/Summons against (ABC) under section ..." under which was the title "Magistrate". Depending on the kind of order the Magistrate issued, he was supposed to cross out the other two orders he did not issue, so as to specify the order he did issue. He also had to specify the provision of the written law. In the instant cases, the Magistrate signed each of the forms to signify he made orders, but did not specify the particular orders. Hence the doubt.

In my view, this argument had no merit. The terms of each complaint itself included an express prayer for a warrant of apprehension to be issued against the relevant applicant under s. 10(1)(b) of the Act. In signing the form, the Magistrate could not be signifying the making of any order other than the one prayed for. I had no doubt about it.

With respect to the argument that the applicants had been arrested on unsigned warrants of apprehension, none of the applicants made this allegation in their affidavits. They could not do so as they denied having been shown the relevant warrants. The argument was made by Counsel solely on the basis that none of the warrants included in the reports to the Minister bore the Magistrate's signature, original or copy. I was asked to infer from this that the original warrants could not have been signed. I was not prepared to do so for the following reasons: firstly, this was a serious allegation of dereliction of duty against the Magistrate made by way of a submission where the Magistrate was given no opportunity to explain the apparent irregularity. Secondly, the Court files, which were produced to me upon my direction, contained copies of signed warrants of apprehension. In my view, the unsigned copies of the warrants of apprehension exhibited in the said reports to the Minister did not necessarily imply that the original warrants under which the applicants were arrested had not been signed.

6. *Were the Alleged Offences Extraditable Crimes?*

Counsel also submitted that the evidence produced to the Magistrate did not disclose that any of the applicants had committed any extraditable crimes.

In the case of SK, no charge or indictment had been made against him. The warrant of arrest issued by the US District Court was based on a complaint to the said Court that SK, in March 1988 within the Eastern District of New York and elsewhere, and others, did knowingly and intentionally distribute more than 1 kilogram of heroin in violation of Title 21 US Code, s. 842(a)(1) and of Title 18 US Code, s. 2. SK deposed that he had never been to the United States and therefore could not have committed any offence in that country. The complaint itself did not specifically allege that SK had been in the United States at any time but that SK had arranged for the heroin to be transported from Bangkok to the United States for distribution therein.

In the case of SS and PB, the warrants of arrest issued by the US District Court were based on a grand jury indictment charging them with: (1) conspiracy to import heroin into the United States; (2) distribution of heroin in Thailand knowing that the heroin would be imported into the United States; (3) importation of heroin into the United States; and (4) distribution of heroin. These charges were framed under various sections of Title 21 US Code and Title 18 US Code. There was no express allegations in the indictment that SS and PB had committed any drug offences in any place within the United States. In their applications, both SS and PB also deposed that they had never been to the United States and therefore could not have committed any offence in that country.

In support of his submission that an offence, to be extraditable, must be one committed in the territory of the state which was seeking extradition, Counsel referred to *The Attorney-General of Our Lady the Queen for the Colony of Hong Kong v. Kwok-A-Sing* [1873] 5 LR PC 179. In that case, Ordinance No 2 of 1850 of Hong Kong provided that where it appeared to a Magistrate that there was probable cause for believing that a Chinese, who had taken refuge in Hong Kong, had committed "any crime or offence against the laws of China" he might be imprisoned with a view to his being surrendered to the Government of China. The respondent 'was accused of having murdered a French captain on a French ship at sea. The Privy Council held, *inter alia*, (1) that it could not be assumed without evidence that there was any law in China to punish a Chinese subject for murder committed upon a foreigner within foreign territory, and (2) that even if it could be so assumed, still the offence ought to be treated as an offence against French and not as an offence against Chinese law.

Counsel submitted that no evidence was produced to the Magistrate to prove that the offences alleged against the applicants were extraditable and that such fact could not be assumed. In my view, this argument was not relevant at this stage of the proceedings *Kwok-A-Sing's* case was concerned with **committal** proceedings. Under s. 10(2), the Magistrate was not required to decide this issue. Nor was it his duty. His duty was to decide, in accordance with the terms of s. 10(1)(b), whether the evidence produced to him would, in his opinion, justify the issue of the warrants of apprehension "**if the act or omission constituting the extradition crime had taken place in or within the jurisdiction of Singapore**". On that criterion, the applicants were undoubtedly subject to apprehension under the Misuse of Drugs Act Cap. 185. Even conspiracies to commit offences under Cap. 185 which take place outside Singapore are within the jurisdiction of Singapore: see s. 13.

In the *United States of America v. Gaynor* [1905] AC 128, the appellants sought to extradite the respondents from Canada for conspiracy to defraud the United States Government. The Judge freed the respondents on the return of the writ of *habeas corpus* on the ground that they had been wrongfully remanded by the Extradition Commissioner under the Extradition Act (RSC Cap. 142). The Privy Council, in allowing the appeal, said (at p. 137):

> The substance of Caron J's determination appears to have been that no offence within the meaning of the Extradition Act was shown upon the document that had been brought before him by a writ of *certiorari*. Their Lordships are wholly unable to agree with him. There was an accusation of theft, which is an offence in both countries; but the learned Judge does not appear to have apprehended that an accusation, on information, of theft was enough for the claim to arrest and detain. Whether the accusation was well founded, or whether there was enough to justify the extradition commissioner in committing for surrender, was a question which would have been regularly brought before him and determined at the proper time if the due course of justice had not been interfered with by the interposition of the learned Judge. The learned Judge accurately points out that a conspiracy is not an offence within the treaty, and because an indictment for conspiracy has been framed in which acts of larceny are charged as overt acts of conspiracy, the learned Judge seems to think that the United States Government are estopped from treating them as distinct and independent act of larceny. The whole matter, and *inter alia* how much evidence there was of larceny, would have been duly and properly investigated if the case had been allowed to take its proper course.

7. *Were the Applicants Fugitives?*

Counsel also contended that the applicants were not fugitives as defined by the Act. Section 2(1) defines a fugitive as follows:

> a person who is accused of an extradition crime that is alleged to have been committed, or convicted of an extradition crime that was committed at a place within the jurisdiction of a declared Commonwealth country or a foreign state or of a part of such country or state and is, or is suspected to be, in Singapore. (Emphasis added)

It was argued that since the applicants had never been in the United States, and also that the criminal acts alleged against them had taken place in Singapore, Hong Kong and Bangkok, the extradition crimes were not committed at any place within the jurisdiction of the United States.

In my view, this argument had no merit by reason of s. 2(2) of the Act which provides as follows:

> 2.-(2) A reference in this Act to a fugitive from a foreign state or declared Commonwealth country shall be read as a reference to a fugitive accused of an extradition crime that is alleged to have been committed, or convicted of an extradition crime that was committed, at a place in that foreign state or declared Commonwealth country **or within the jurisdiction of, or of a part of, that state or country.** (Emphasis added)

Section 2(2) makes it clear that it is sufficient for the purposes of the Act that the fugitive in question is alleged to have committed an extradition crime within the jurisdiction of the state seeking extradition. It is not necessary for such a crime to be committed at a place within the jurisdiction of that state. Conspiracy to commit a crime is extraditable under para. B of the First Schedule to the Act which lists, *inter alia*, the following as a returnable offence:

> Aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in para. A.

8. *Was Oppression, if Proved, a Ground for Release?*

It was argued by Counsel that the applicants had been subject to oppressive acts by the prison authorities, firstly by the Director of Prisons in transferring the applicants to Changi Prison, and secondly by the 1st respondent in putting them in solitary confinement and denying them access to members of their family in order to break their will and physical well-being.

I have already given my reasons for finding that the complaint against the Director of Prisons' had no substance whatever. As regards the allegations against the 1st respondent, the Prisons doctor filed an affidavit stating that he had examined the applicants and found them to be physically well. The 1st respondent also affirmed affidavits that the applicants were not kept in solitary confinement but in separate cells for their own safety and security, that they had frequent access to their relatives on and after 19 April 1991, and that they had been medically examined on 5 occasions and their medical condition was found satisfactory. The applicants were also given access to their solicitors. In the circumstances, the allegations could not be proved. In fact, the applicants' allegations referred only to the short period before they were given access to their relatives and solicitors. If the prison authorities had acted unlawfully, the applicants were entitled to sue them for the wrongful acts, but they were not entitled to be released: see *Chng Suan Tze v. Minister for Home Affairs* [1989] 1 MLJ 69.

9. *Observations*

Counsel for the applicants raised many issues, all of which I have rejected either as unfounded in law or fact. In the *United States of America v. Gaynor*, the Privy Council said (at pp. 137-138, immediately after the passage I have earlier quoted herein):

> Their Lordships do not mean to suggest that the writ of *habeas corpus* is not applicable when there is a preliminary proceeding. Each case must depend upon its own merits. But where a prisoner is brought before a competent tribunal, and is charged with an extradition offence and remanded for the express purpose of affording the prosecution the opportunity of bringing forward the evidence by which that accusation is to be supported; if, in such a case, upon a writ of *habeas corpus*, a learned Judge treats the remand warrant as a nullity, and proceeds to adjudicate upon the case as though the whole evidence were before him, it would paralyze the administration of justice and render it impossible for the proceedings in extradition to be effective.
>
> The proceedings are very simple: information and arrest; then either at once or on remand-the Judge investigates the case, and either discharges or makes up his mind to commit for extradition, and, if he does the latter, he has to inform the accused person that he will not be surrendered for fifteen days, in order to afford him an opportunity of bringing the legality of his surrender before a Court of justice.

These observations were opposite to these applications. They were misconceived and were accordingly dismissed.

Also found at [1991] 3 CLJ 1983